

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LUCIANO TONELLI,)	CASE NO. C05-0376-RSL-MAT
)	
Plaintiff,)	
)	
v.)	ORDER DISMISSING § 1983 ACTION
)	
SARGENT AUTRY, et al.,)	
)	
Defendants.)	
_____)	

The Court, having reviewed defendants' motion for summary judgment, plaintiff's response, defendants' reply, plaintiff's surreply, the Report and Recommendation of the Honorable Mary Alice Theiler, United States Magistrate Judge, plaintiff's "motion of objection for consideration," and the balance of the record,¹ does hereby find and ORDER:

(1) The Court adopts the Report and Recommendation.

(2) Defendants' motion for summary judgment (Dkt. #31) is GRANTED. The

¹ On January 12, 2006, plaintiff mailed his "Motion of Extension of Time" (Dkt. # 44). According to Rule 4 of the Rules of Appellate Procedure, the time period for filing an appeal begins when the judgment or order being appealed is entered. Because plaintiff filed his motion before the entry of judgment or a dismissal order, the motion is denied as premature. If he continues to seek an extension, plaintiff may refile his motion after this order has been entered.

01 complaint and this action are DISMISSED without prejudice for failure to exhaust under 42
02 U.S.C. § 1997e.

03 (3) The Clerk is directed to send copies of this Order to plaintiff, to counsel for
04 defendants, and to Judge Theiler.

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06 DATED this 20th day of January, 2006.

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08 Robert S. Lasnik
09 United States District Judge
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